



Indirect Tax VAT alert

VAT in the Digital Age: Platform economy and e-commerce changes

On 8 December 2022, the European Commission adopted and published its “[VAT in the Digital Age](#)” proposal, defining the core areas where European VAT will be modernised in the coming years. Alongside the changes made to digital reporting requirements and e-invoicing, (see our [tax alert](#) of 11 December 2022), the proposal would also bring significant modifications to the VAT treatment of the platform economy. As part of a series of measures designed to address the VAT issues associated with the digital economy that have been implemented since 2015, the European Commission has now proposed that online platforms active in the short-term accommodation and passenger transport sectors would become liable for VAT as “deemed suppliers,” instead of the underlying providers. This model would also be used for both business-to-business (B2B) and business-to-consumer (B2C) supplies of e-commerce goods. In addition, the use of the One Stop Shop (OSS) mechanism would be expanded, allowing businesses moving and selling goods outside their home country to do so under a single VAT registration, significantly reducing the cost of VAT administration in the EU.

The European Commission’s adoption of the proposed measures brings the proposal into the public domain and initiates the formal legislative process for VAT in the Digital Age. Enactment of the proposal requires unanimous approval by EU member states, which may entail further changes or additions to the measures as currently presented. For most of the VAT proposals under consideration, the anticipated implementation date is 1 January 2025. This is likely to be an ambitious timeline as member states must not only implement the changes in their national VAT legislation, but also adapt government and business processes and systems.

Platform economy: Changes for accommodation and passenger transport sectors

The European Commission's action plan provides for a general review of the VAT treatment of the platform economy, which is a broad term used to describe multifaceted business models where the online or digital platform facilitates the connection between two or more distinct but interdependent sets of users (whether companies or individuals, and whether or not carrying out an economic activity).

By contrast, the current legislative proposal focuses mainly on short-term accommodation rental and passenger transport activities, which according to the European Commission, account for over 70% of the platform economy (excluding supplies of e-commerce goods) in Europe.

Under the proposals, both EU and non-EU established platforms that facilitate supplies of B2B and B2C short-term accommodation rental (defined as having an uninterrupted rental period of a maximum of 45 days, with or without the provision of ancillary services) and passenger transport, would be liable for VAT as deemed suppliers. However, this would be the case only where these services are provided by underlying suppliers whose operations are not subject to VAT in the EU. The definition of facilitation, and the manner in which the deemed supplier rule operates, largely correspond to the existing e-commerce legislation in force since 1 July 2021.

The platform operator would assume the VAT liability for certain underlying suppliers including nontaxable persons (i.e., private individuals), fully exempt entities, taxpayers subject to a small and medium enterprise (SME) exemption, as well as persons who are not established in the member state of taxation and are not VAT registered anywhere in the EU (typically non-EU providers). The implementing regulation specifies that the platform operator will become liable for VAT in all cases where the underlying supplier has not provided a valid VAT number to the platform operator, meaning that the operator would need to establish processes to collect and validate VAT numbers for all underlying suppliers active on their platform.

As the deemed supplier, the platform operator would be required to charge VAT on the services provided by the underlying supplier to both B2B and B2C recipients, as if they were providing these services themselves. This means that the platform would need to collect and remit the relevant member state's VAT, based on the location of the accommodation or where the transport is provided, calculated on the full amount paid by the customer. These supplies could not be exempt from VAT but could benefit from reduced rates depending on national VAT legislation in the applicable member state. The margin scheme applicable to tour operators and travel agents (TOMS) does not apply to supplies by platform operators.

To meet their new VAT obligations, platform operators would have to either register in all member states in which they have underlying operations, or register under an OSS scheme that allows them to declare and pay VAT in one member state for B2C services performed across multiple EU jurisdictions. For the underlying suppliers, the transfer of their VAT liability to the platform operator would imply that the suppliers would be deemed to render an initial service to the platform, which would be exempt from VAT without the right to deduct input VAT. Providers of short-term accommodation rental or passenger transport wishing to deduct input VAT on their associated costs could apply for VAT registration, and apply VAT on the supplies under the standard rules.

One proposal with a potentially broader application across the platform economy would be the new place of supply rule for B2C facilitation services provided by platforms; as from 1 January 2025, the place of supply of these services would follow that of the underlying transaction. Where private individuals pay a commission or fee to platforms, the VAT charged by the platform would therefore not always be based on the location of the customer, as is currently the case for digital services.

Further changes to e-commerce transactions for goods

On 1 July 2021, the VAT rules applicable to e-commerce transactions for goods changed significantly, and all B2C supplies of goods to customers in the EU are in principle taxed at the location of their destination, irrespective of their place of origin. E-commerce marketplaces facilitating supplies of goods by third party sellers have also been tasked with the collection and payment of VAT on certain types of transaction, through a deemed supplier mechanism. This e-commerce VAT package is viewed as largely successful in respect of the increased collection of VAT, although some practical areas for improvement have since been identified.

The European Commission's proposal already predicts a significant extension of the deemed supplier rules for platform operators making supplies within the EU. Currently, this only applies to B2C supplies made by non-EU based sellers. As from 1 January 2025, platforms and marketplaces would become the deemed supplier for all supplies of goods facilitated by platforms and marketplaces, covering EU and non-EU suppliers, to both B2B and B2C recipients. An exception is provided for local marketplaces and portals that are only established in one member state and merely facilitate domestic supplies within that member state. If this extended scope is implemented, most platform operators and marketplaces would be liable for VAT on all revenue realised through their websites.

E-commerce goods originating outside the EU may also be within scope of the new rules. Marketplaces facilitating the supply of these goods, sent in consignments below EUR 150 to an EU consumer, would be required to register for the Import One Stop Shop (IOSS), which is currently an optional regime. For these transactions, marketplaces would collect VAT based on the member state of destination, which they would remit centrally through their IOSS registration on a monthly basis. This would bring increased uniformity in the import flows of these low value goods, as under the IOSS, the import transaction itself is exempt from VAT. The IOSS would not become mandatory for traders making imported distance sales through their own website. Possible further changes to improve the VAT collection for imported distance sales will be considered as part of the ongoing revision of the Union Customs Code.

A third deemed supplier mechanism provided in the European Commission's proposal concerns the movement of goods belonging to third party sellers from one member state to another (intra-Community transfers). This is a common situation in e-commerce businesses, where goods are stored in multiple fulfilment centres with a view to reducing delivery times and improving customer choice. Where taxable persons facilitate the movement of these goods through the use of an electronic interface, they are deemed to have received those goods at the point of dispatch from the third party seller, which means that the cross-border movement is treated as a movement of their own goods. These taxable persons must therefore report the relevant own goods transactions for VAT purposes, either through their VAT registration in the member state involved, or through a newly created OSS scheme for the transfer of own goods (see below).

Single VAT registration: Reducing the administrative burden for business

The European Commission has made the reduction of the tax compliance burden for internationally active businesses, many of whom are SMEs, a central feature in the modernisation of the EU VAT regime. The proposal creates further opportunities for taxpayers to do business across borders in the EU with a single VAT registration through the increased use of the OSS regimes.

New special scheme for transfers of own goods

Currently, taxpayers who move goods from one member state to another, outside of a sales transaction, are obliged to report an intra-Community acquisition of those goods in the member state of destination. This may require the taxpayer to register for VAT in that member state, resulting in a potential for multiple EU VAT registrations for businesses in different sectors, particularly for those active in consumer supplies and e-commerce. Simplification measures implemented in the past, such as the quick fix call-off stock simplification, have not always provided an adequate solution.

The European Commission has proposed a new special reporting scheme as from 1 January 2025, whereby businesses making transfers of own goods could report them in their member state of identification. This would be the member state of establishment for EU-based taxpayers, but the scheme would also be open to non-EU businesses who would opt into the scheme in the country of departure of the goods (e.g., at a central import point or at an EU production facility from which products are sourced).

Taxpayers opting for this new special scheme would need to submit monthly returns to the tax authorities in the member state of identification, showing the member state to which goods were transferred during that month and the total value of the transfers, as well as a breakdown of the shipments from each member state of departure, where this is different from the member state of identification. Under this regime, the arrival of the goods would be exempt from VAT rather than taxed as an intra-Community acquisition.

As for other OSS schemes, taxpayers making use of the special schemes would need to keep detailed records for each transaction, including ship-from and ship-to addresses and, for transfers reported by platforms under the deemed supplier rule, the name, address, and, if available, VAT number and international bank account number (IBAN) of the underlying supplier.

The special scheme for transfers of own goods would provide a simpler method of reporting movements of own goods than the call-off stock simplification scheme introduced with the 2020 VAT quick fixes, particularly as the owner of the goods would carry out the VAT reporting without the need for an intended acquirer to be identified at the moment of the transfer. Consequently, the call-off stock simplification would be phased out by 1 January 2026.

Extension of the Union OSS to all types of B2C supplies

As part of the 2021 e-commerce VAT package, suppliers making cross-border B2C sales of goods within the EU, as well as marketplaces collecting VAT as the deemed supplier on sales made by non-EU suppliers within the EU, are allowed to report these supplies in one member state of identification using the Union OSS (UOSS) scheme. The same scheme already permits unified reporting for all B2C services provided across the EU.

To further reduce the situations where taxpayers are obliged to register for VAT outside of their home country, the scope of transactions covered by the UOSS would be increased to include all domestic B2C supplies of goods, allowing, for example, the reporting of sales made from stock held in the

customer's country, or electronic vehicle charging transactions in multiple member states.

Another addition to the current UOSS would be the inclusion of cross-border sales of second-hand goods, works of art, collector's items, and antiques. As from 1 January 2025, these would also be taxed at their place of destination, and could therefore be added to a taxpayer's UOSS return.

Mandatory application of the domestic reverse charge for B2B transactions by nonestablished suppliers

To reduce the need for taxpayers to register outside their country of establishment, the European Commission has proposed that the domestic reverse charge for B2B supplies of goods and services made by nonestablished taxable persons must be available in all member states. Where a taxpayer who is not established in a member state moves goods domestically within a member state, the VAT due would be payable under the reverse charge mechanism by the recipient, if that recipient is already identified for VAT in that member state (either as an established or a nonestablished taxpayer).

This reverse charge mechanism would free the supplier from the requirement to register for VAT. The transaction would however need to be reported by the supplier on the European Sales List in the country of establishment, as from 1 January 2025, and be subject to intra-EU e-reporting, as from 1 January 2028.

Comments

Further improving VAT collection and facilitating compliance in the digital economy remain important focal points of the European Commission's VAT in the Digital Age strategy, and the current proposal builds further on the groundwork of the e-commerce VAT package that has applied since 1 July 2021.

The changes to the VAT liability for platform operators would initially be limited to the accommodation and transportation sectors, as an important pilot for a potential later transformation of how VAT applies to all types of digital business model. In an unexpected move, the European Commission's proposal extends the deemed supplier rule for e-commerce goods to all types of transaction facilitated by marketplaces and portals, widening the scope of the changes to encompass a large number of platforms that are currently not involved in VAT calculation or VAT payment for the underlying suppliers.

These two elements may trigger significant resistance towards the proposed changes from both affected businesses and also national tax authorities. However, this must be set against the potential positive developments for the broader business community in respect of reducing the VAT administrative burden when conducting business across borders, such as the introduction of the special scheme for transfers of own goods, or the extended scope of the UOSS.

Business should monitor further developments in respect of the VAT in the Digital Age initiative closely, to ensure that they are well prepared for implementation of the new rules.

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